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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
09/921,012	08/02/2001	Nicola Ghelli	DID1040US	5838
7590	11/02/2004			
POPOVICH & WILES, P.A. IDS Center, Suite 1902 80 South 8th Street Minneapolis, MN 55402			EXAMINER DEAK, LESLIE R	
			ART UNIT 3762	PAPER NUMBER

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,012

Applicant(s)

GHELLI ET AL.

Examiner

Leslie R. Deak

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,662,829 to Nehring in view of US 5,413,599 to Imachi et al, further in view of US 4,673,393 to Suzuki et al. Nehring discloses a pump with a housing 10 with an inlet end 12 and an outlet end 14 with check valves 20 and 22 that may be located on the exterior of the housing (see FIG 4). The pump further comprises an elastic sleeve 16 that separates sections of the interior cylindrical pumping chamber 30. A vacuum driving chamber 32 expands and contracts the elastic sleeve 16, pushing fluid through the pumping device. Nehring discloses that the valves may be of any convenient design consistent with the intended use of the device. See columns 4-5, FIGS 1-5. See also FIGS 6-9, columns 7-9, for alternate embodiment with two-part housing and single elastic member in chamber. Imachi discloses a medical valve that may be used in a pumping apparatus with a valve seat 2 with holes or ducts 3 and 3' arranged in a radial fashion. The valve further comprises a flexible membrane 1 with undulated edges, creating holes, that is located on the valve seat and moves to allow fluid to pass therethrough. See columns 2-3, FIGS 1-3. Imachi fails to disclose that his valve is attached to the housing at the periphery of the flexible membrane. However, Suzuki

discloses a medical device with a slit valve that is attached to the housing of the device at the peripheral edges of the flexible membrane (see FIG 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use a flexible valve attached at the periphery of the flexible membrane as taught by Suzuki to cover a set of radially arranged ducts, as taught by Imachi, in the pumping device disclosed by Nehring in order to provide a check valve that does not allow fluid backflow and allows free forward flow of fluid, as taught by Imachi.

Response to Arguments

2. Applicant's arguments filed 9 August 2004 have been fully considered but they are not persuasive. Applicant argues that the Imachi device would be rendered inoperable if the edges of the flexible valve were fixed at the periphery of the valve, as claimed in the instant invention. However, it is the position of the examiner that the pressure of fluid flow through the pumping device would force the flexible valve open whether the opening was at the periphery or center of the valve. Sealing the valve at the periphery of the Imachi device does not seal or otherwise occlude flow through the radial openings of the pump disclosed by Imachi. The center-slit valve disclosed by Suzuki would not render the Imachi device inoperable, as argued by applicant.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie R. Deak whose telephone number is 703-305-0200. The examiner can normally be reached on M-F 7:30-5:00, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on 703-308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lrd
21 October 2004



ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700